IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION,

WRIT PETITION NO. 2229/1999

Mansarovar Co-Operative Housing
Society Ltd.,
(A Co-operative Housing Society
registered under the Maharashtra
Co-operative Societies Act 1960 having
its Office at Mansarovar, Plot No. 14,
Sector 17, Vashi, New Bombay 400 705)

.....**PETITIONER**

...V E R S U S...

1. State of Maharashtra.

2. City and Industrial Development
Corporation Ltd.
(A Company registered under the
Companies Act 1956 and wholly
owned by the Respondent No.1
having its office at Nirmal,
Nariman Point, Mumbai 400021)

3. Executive Engineer (Water Supply)
of City and Industrial Development
Corporation Ltd.,
(An administrative Officer of the
Respondent No. 2, having its officer at
CIDCO Bhavan, CBD Belapur,
Navi Mumbai 400 614)

4. Superintending Engineer (Water
Supply) of City and Industrial

Development Corporation Ltd.,
(An administrative officer of the
Respondent No. 2, having its
Office at CIDCO Bhavan, CBD
Belapur, Navi Mumbai 400 614)

5. Assistant Engineer (WS) of City
and Industrial Development
Corporation Ltd.,
(An administrative Officer of the
Respondent No. 2 having its office
at Old CIDCO Adm. Office,
2nd Floor, Sector I, Vashi,
Navi Mumbai.)

6. Navi Mumbai Municipal Corporation
(A Municipal Corporation constituted
under the Bombay Provincial
Municipal Corporation Act 1949 having
its office at Belapur, Navi Mumbai)

.....**RESPONDENTS**

Mr. V. A. Sonpal, Advocate for the Petitioner.
Mr. Mr. P. P. Kakade, A.G.P. for respondent No. 1.
Mr. G. S. Hegade, Advocate for respondent No. 2.
Mr. R. S. Apte, Advocate for respondent No. 6.

CORAM:- F. I. REBELLO & R. V. MORE, JJ.

Date of Reserving Judgment:- **11th January, 2007.**
Date of Pronouncing Judgment:- 11th January**, 2007.**

JUDGMENT (Per R. V. MORE, J.)

1. Heard Mr. V. A. Sonpal, Advocate for the petitioner, Mr. P.P. Kakade, A.G.P. for respondent No. 1, Mr. G. S. Hegde, Advocate for respondent No. 2, Mr. R. S. Apte, Advocate for respondent No. 6.

2. The petitioner by filing the present petition under Article 226 of the Constitution of India challenges the legality and validity of the notice issued by respondent No. 3 dated 11.02.1998 and respondent No. 5 dated 07.04.1999 and 10.04.1999. The petitioner also challenges the commercial rate for consumption of water for the part of the residential building from 5th to 7th floor of the building as illegal, invalid and *ultra vires* and further direction to the respondents to levy water charges at the rate applicable for the residential user by the petitioner for all the seven floors of the building from October-1998 to January-1999 and thereafter.

3. The case of the petitioner in nutshell is that its members have purchased various flats and shops from the *M/s. Madhu Builders* under the registered deed or agreement of sale and they have been put in possession of their respective flats and shops by the builder.

The function of administration of the building has been handed over by the builder to the petitioner society somewhere in the year 1991. The builder obtained Occupancy Certificate from respondent No. 2 on 10.04.1987 in respect of the first to fourth floor of the building, however, Occupancy Certificate in respect of upper floors of the building comprising of fifth to seventh floor was not granted to the builder since operation of the Lift in the building was in progress and the work of installation of the Lift was going on. The respondent No.2 issued No Objection Certificate on 12.05.1987 in favour of the builder for obtaining permanent water supply connection for residential purpose to the members of the petitioner owning the residential flats and, thereafter, respondent No. 2, under its statutory duty, has been supplying the water to the petitioner for residential purpose since the year 1987 and recovering the water charges regularly for the supply of water at the rate applicable to the residential user. For the purpose of supply of water to the residential flats the petitioner has constructed underground water tank where the water supplied by the respondent No. 2 is stored and, thereafter, the same is pumped to the terrace tank to be supplied to the individual residential flats through network

of the pipeline. All the members of the petitioner, who are owning the residential flats are using their respective flats for residential purposes only. It is the case of the petitioner that later on the builder has installed both the Lifts in the year 1990 as required under the Development Control Regulation. In spite of this the petitioner learnt that the respondent No. 2 has failed and neglected to issue requisite Occupancy Certificate to the said builder in respect of remaining fifth to seventh floor of the building. It is the further contention of the petitioner that respondent No. 3 issued notice on 11.02.1998 intending to charge water for 5th to 7th floor at commercial rate. Thereafter, in spite of the petitioner's letter, to respondent No. 4 requesting to look into the matter and not to charge the commercial rate for water for part of the building, they received bill for water charges at different rates i.e. for the first to fourth floor at residential rate and fifth to seventh floor at commercial rates. Respondent No. 5 by notices dated dated 07.04.1999 and 14.04.1999 called upon petitioner to pay bill before 14.04.1999 and 19.04.1999 respectively and threatened to disconnect the water supply of the petitioner in the event of failure to pay the same.

It is, under these circumstances, the petitioner has preferred the present writ petition, invoking extra ordinary jurisdiction of this Court.

4. Respondent No. 2 and 3, by filing the reply contested the petition on various grounds and claimed that the petition is devoid of substance and liable to be dismissed. It is the contention of respondent No. 2 that on account of dispute about payment of lease premium, respondent No. 2 has not granted the Occupancy Certificate to the petitioner in respect of fifth to seventh floor of their building. The respondent No. 2 has right to decide the category of consumption such as domestic, commercial etc. The specific contention of respondent No. 2 and 3 is that since Occupancy Certificate was not granted in respect of fifth to seventh floor, the members of the petitioner were not entitled to occupy any of the flats on these floors of their building. The said flats came to be illegally occupied by the members of the petitioner society and water was being used by them. The residential use of the flat on fifth to seventh

floor was not legal and hence commercial rate is being charged for them.

5. We have heard the respective counsel for the parties. The learned counsel for the petitioner submitted that its members are using the water for residential purposes only and in the absence of any material showing that use of water is for the commercial purposes, the respondent No. 2 cannot charge water at commercial rate. It is also submitted that the entire building comprising of first to seventh floor is being used for residential purpose and not for commercial purpose and, therefore, the respondents are not justified in charging the commercial rate for the residential user of water in respect of part of the building. It is also submitted that action of the respondents is contrary to provisions of the *Maharashtra Regional and Town Planning Act, 1966* and the *Bombay Provincial Municipal Corporations Act, 1949*. It is also contended that the failure to obtain Occupancy Certificate cannot be considered to be a ground to presume that use of water is for a purpose other than residential.

6. *Per contra*, the learned counsel for respondent Nos. 2 and 6 submitted that respondent No. 2 and respondent 5 were justified in issuing the bills and charging water at commercial rates to the occupation of the fifth to seventh floor of the building as members of these floors have occupied their residential flats illegally.

7. The respondents also relied upon Division Bench judgment in **Emtex Industries (India) Ltd. & another ...versus... Maharashtra industrial Development Corporation Limited & another; 2004 (5) Bom. C. R. 274**

8. We have given anxious consideration to the issue in question. The respondent No. 2 now ceased to be the planning Authority in respect of the some of the part in Navi Mumbai, particularly in respect of the area falling under the town of Vashi with effect from 16.12.1994 and respondent No. 6-Navi Mumbai Municipal Corporation is the planning Authority for area of Vashi. The controversy involved in the present writ petition is that respondent No.2 or respondent No. 6 can legally levy the water charges at

commercial rates on the premises for which Occupancy Certificate has not been issued by the Authority in exercise of powers under the *Maharashtra Regional And Town Planning Act* as Planning Authority. It is not disputed that respondent No. 2 issued Occupancy Certificate in respect of first to fourth floor in the year 1987. Respondent No. 2 also confirmed by letter dated 12.05.1987 that the entire work of the building is completed and it has no objection to supply of permanent water connection for residential purposes and, thereafter, water was being supplied by respondent No. 2 under its statutory duty since the year 1987 and recovering regular water charges at the rate applicable to the residential use. There is no dispute that the construction work of the building is completed and certificate is issued by the respondents themselves and the water is being supplied by the respondents for residential user only.

9. The Maharashtra Jeevan Pradhikaran, under the *Maharashtra Jeevan Pradhikaran Act* is the tariff regulatory Authority undertakes water supply to the local bodies after fixing the rates for wholesale and retail distribution. It also fixes the rates of water

ultimately charged by it to the Local Authority and also rates that will be fixed by the local authority to the consumers. The definition of domestic user and commercial user find place in Section 40 of the Maharashtra Jeevan Pradhikaran Authority Act which reads as under:-

> "Section 40; The supply of water for domestic purposes under this Act means supply for any purpose, except the following:
>
> (a) for any trade, manufacture or business;
> (b) for gardens or for purposes of irrigation;
> (c) for building purposes including construction of streets;
> (d) for fountains swimming baths public baths or tank or for any ornamental or mechanical purposes;
>
> (e) for animals where they are kept for sale or hire or for sale of their produces;
> (f) for consumption and use at restaurant or by inmates of a hotel boarding house or residential club;
> (g) for consumption use by persons resorting to theaters and cinemas;
> (h) for watering vehicles where they are kept for sale or hire.

10. There is no dispute that water is drawn by the respondent Nos. 2 and 6 from the said Authority and, therefore, rates fixed by Authority shall be applicable including the classification between domestic user and commercial used in Section 40 of the Act. The plain reading of the above provisions show that action and the notices of the respondents, which are impugned in the present petition, in our opinion are arbitrary, discriminatory and, therefore, deserve to be quashed and set aside.

11. Section 2(75) of the *Bombay Provincial Municipal Corporations Act* provides definition of water for domestic purposes, which reads as under;

> "Section 2(75):
> "water for domestic purposes" shall not include water for cattle, or for horses, or for washing vehicles, when the cattle, horses or vehicles are kept for sale or hire or by a common carrier; and shall not include water for any trade, manufacture or business, or for building purposes, or for watering gardens, or for fountains or for any commercial or mechanical purposes;"

In view of the above definition we are of the view that respondent Nos. 2 and 6 have no powers to reconsider the definition of commercial user and domestic user contrary to the provisions of the *Maharashtra Jeevan Pradhikaran Act* and the *Bombay Provincial Municipal Corporations Act* by defining that the buildings that have no Occupancy certificate shall be charged commercial rates. The rates charged are always depending on the occupation, user and not otherwise. If, using of the water is admittedly for domestic purposes, in that case the respondents cannot charge water at commercial rate in the absence of any statutory provision or policy in this regard. It is worth to mention at this stage that the water connection is given for the whole building without restricting it to the first four floors and, therefore, the respondents are not justified in charging commercial rate to the residents of fifth to seventh floor of the petitioner's building. The action of the respondents, in the fats and circumstances of the present case cannot stand to the scrutiny of law especially when the Board of Directors of respondent No. 2 as well as Standing Committee of respondent No. 6 have not sanctioned commercial rate for the part of the building. The Deputy Engineer of the respondent

No. 2 or Executive Engineer in case of respondent No. 6 cannot fix water rates without there being sanction of such rate by the statutory Authorities namely Board of Directors of CIDCO and Standing Committee of the Corporation respectively. On this count also the impugned notice deserves to be quashed and set aside.

12. The factum as to whether the Builder has obtained Occupancy Certificate or not is not the governing factor for determining the rate at which the water is to be charged. Though, respondent No. 6 is entitled to take independent action against the petitioner or its predecessor-in-title for failure to obtain part of the Occupancy Certificate, permissible under the relevant law. As far as the judgment relied upon by respondent No. 6 in **Emtex Industries (India) Ltd. & another ...versus... Maharashtra industrial Development Corporation Limited & another** (supra) is concerned, same is not applicable to the present facts. In that case, the respondent No. 1 which is a statutory Corporation, formulated a scheme under which every industrial unit was required to submit Building Completion Certificate (BCC) for its factory building and

construction. If, BCC is not submitted the respondent No. 1 under its policy used to levy water charges at the penal rate of 1.5 times the normal water charges. The petitioner in the petition challenged the demand on the part of respondent No. 1 for payment of more than Rs. Two Crores as difference between normal rate and penal rate of water charges. The Division Bench dismissed the petition on the ground that the demand notices are not illegal and unlawful or without the authority of law since the same are issued in accordance with the policy of the respondent No. 1-Corporation. The ratio of this decision cannot be made applicable to the facts and circumstances of the present case in the absence of any policy either by respondent No. 2 or respondent No. 6 to charge commercial rate for the domestic consumption of the water on the ground that Occupancy Certificate was not obtained.

13. In the facts and circumstances of the case the petition succeeds.

Rule is made absolute in terms of prayer clause (a), (b), (c) and (e).

No order as to the costs.

JUDGE **JUDGE**

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